



U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

FILE: [REDACTED] Office: Nebraska Service Center

Date: AUG 16 2000

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Travel Document Pursuant to Section 223 of the Immigration and Nationality Act, 8 U.S.C. 1203

IN BEHALF OF PETITIONER: Self-represented

Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

John M. O'Reilly

Terrence M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Nebraska Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The applicant is a native and citizen of [REDACTED] who is seeking to obtain a reentry permit pursuant to section 223 of the Immigration and Nationality Act (the Act), 8 U.S.C. 1203.

The director denied the application after determining that the applicant was not in the United States at the time the application was filed.

On appeal, the applicant claims that he mailed his initial application along with the required fee on September 24, 1998, and that he left the United States for [REDACTED] on October 25, 1998. He states that several months later, the Service returned his application because he did not have a U.S. address as a mailing address.

In pertinent part, section 223 of the Act provides that an alien lawfully admitted for permanent residence who intends to visit abroad and return to the United States to resume that status may make an application for a permit to reenter the United States.

With certain exceptions¹, regulations at 8 C.F.R. 223.2(b) allow for the approval of a reentry permit if the application (Form I-131) is filed by a lawful permanent resident or conditional permanent resident. Additionally, regulations at 8 C.F.R. 223.2(b) require that the application be filed with the Service prior to departure from the United States.

Further, regulations at 8 C.F.R. 103.2(a)(1) provide that every application, petition, appeal, motion, request, or other document submitted on the form prescribed by this chapter shall be executed and filed in accordance with the instruction on the form. The instructions attached to the Form I-131 state in pertinent part:

Processing Information. Acceptance....an application is not considered properly filed until it is accepted by the Service.

8 C.F.R. 103.2(a)(7)(i) states, in pertinent part:

An application or petition received in a Service office

¹See 8 C.F.R. 223.2(c) providing ineligibility where (1) a prior reentry permit is still valid, (2) certain extended absences have been taken by the applicant, or (3) the applicant is entitled to nonimmigrant diplomatic or treaty status and has not submitted the applicable waiver and/or tax exemption form.

shall be stamped to show the time and date of actual receipt and....shall be regarded as properly filed when so stamped, if it is properly signed and executed and the required filing fee is attached or a waiver of the filing fee is granted....

The application for reentry permit was filed on March 2, 1999. The applicant submits evidence that he departed from the United States on October 25, 1998.

The applicant on appeal claims that he mailed the initial application along with the required fee on September 24, 1998. He states that several months later, the Service returned his application because he did not have a U.S. address as a mailing address. The record, however, does not contain evidence to support this claim. While the applicant submits a copy of his check dated September 24, 1998 in the amount of \$70 as evidence of filing, this check does not reflect that it had been cancelled by the bank. Nor is there evidence to establish that the claimed initial application was received by the Service prior to his departure on October 25, 1998. It is noted that the applicant claimed on appeal that when he returned the application to the Service, he sent a check dated February 25, 1999 in the amount of \$95.

As required by 8 C.F.R. 223.2(c), the applicant has failed to establish that he was in the United States at the time the application for a permit to reenter the United States was filed with the Service. Therefore, the application cannot be approved.

The burden of proof in these proceedings rests solely with the applicant. Section 291 of the Act, 8 U.S.C. 1361. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

A lawful permanent resident of the United States in possession of a resident alien card (Form I-151) who seeks to reenter the United States after an absence of one year and who does not possess a reentry permit may apply to the nearest U.S. consular office for a returning resident visa.

ORDER: The appeal is dismissed.